

STATE OF MICHIGAN
COURT OF APPEALS

DAVID P. JACOBS and JOAN JACOBS,

Plaintiffs-Appellants,

v

MOREQUITY, INC., NATIONSTAR
MORTGAGE LLC, and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC.,

Defendants-Appellees,

and

CORE LOGIC and WELTMAN WEINBERG &
REIS CO., LPA,

Defendants.

UNPUBLISHED
November 24, 2015

No. 323849
Macomb Circuit Court
LC No. 2014-002264-CH

Before: SHAPIRO, P.J., and O'CONNELL and GLEICHER, JJ.

PER CURIAM.

In this challenge to a foreclosure by advertisement, plaintiffs argue that the trial court erred in determining that defendant did not violate the foreclosure by advertisement statute, MCL 600.3201 *et seq.*, when it foreclosed on plaintiffs property before the expiration of the 30-day period under MCL 600.3205a(1)(d).¹ Defendant filed a motion for summary disposition pursuant to MCR 2.116(C)(8),² which the trial court granted. Because there were no substantial

¹ MCL 600.3205a was repealed by 2012 PA 521. All references in this opinion to MCL 600.3205a are to the former version of the statute.

² “A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone.” *Beaudrie v Henderson*, 465 Mich 124, 129-130; 631 NW2d 308 (2001). “The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery.” *Id.*

irregularities or fraud in the foreclosure proceedings and because defendant provided notice of foreclosure on June 5, 2012, we affirm.

Only a strong showing of fraud or irregularity warrants setting aside a foreclosure sale. *Sweet Air Investment, Inc v Kenney*, 275 Mich App 492, 497; 739 NW2d 656 (2007). Further, “defects or irregularities in a foreclosure proceeding result in a foreclosure that is voidable, not void *ab initio*.” *Kim v JPMorgan Chase Bank, NA*, 493 Mich 98, 115; 825 NW2d 329 (2012).

Here, plaintiffs argue that defendant foreclosed on the property without providing them with an opportunity to exercise their loss mitigation options under MCL 600.3205a. On June 5, 2012, plaintiffs were mailed notice pursuant to MCL 600.3205a(1).³ After receiving the notice, they applied for a loan modification under the Home Affordable Modification Program, submitting an application and supporting financial documents. On August 26, 2012, plaintiffs were notified that they were approved for a trial period plan that would lower their monthly obligations. To accept the plan, plaintiffs were required to make the requisite payments. However, they rejected the offer when they declined to submit the first payment. Pursuant to MCL 600.3205c(7), because plaintiffs did not agree to the loan modification offered, defendant was entitled to proceed to foreclosure even though plaintiffs were eligible for a loan modification.⁴

Moreover, contrary to plaintiffs’ assertions on appeal, it is apparent that they received notice pursuant to MCL 600.3205a(1) on June 5, 2012, but the sheriff’s sale did not occur until December 6, 2013, nearly 18 months after the notice was provided. Accordingly, the foreclosure occurred long after the 30-day loan modification period lapsed. Nothing in the statutory language mandates that a borrower receive a second notice pursuant to MCL 600.3205a(1) and a second 30-day period to explore loan modification options. The fact that defendant sent a second

³ On June 5, 2012, when the notice was mailed, defendant MorEquity held plaintiffs mortgage and Nationstar Mortgage LLC was the servicer for plaintiffs’ loan. Thus, Nationstar’s attorney mailed the notice and worked with plaintiffs during the loan modification process. Nationstar assigned its interest in the mortgage to defendant MorEquity on September 19, 2013.

⁴ MCL 600.3205c(7) was repealed by 2012 PA 521. The former version of the statute provided:

(7) If the determination under subsection (1) is that the borrower is eligible for a modification, the mortgage holder or mortgage servicer may proceed to foreclose the mortgage under this chapter if both of the following apply:

(a) The person designated under section 3205a(1)(c) has in good faith offered the borrower a modification agreement prepared in accordance with the modification determination.

(b) For reasons not related to any action or inaction of the mortgage holder or mortgage servicer, the borrower has not executed and returned the modification agreement within 14 days after the borrower received the agreement.

notice on November 14, 2013 and then foreclosed 24 days later is, therefore, of no relevance to the foreclosure in this case.⁵

Affirmed.

/s/ Douglas B. Shapiro
/s/ Peter D. O'Connell
/s/ Elizabeth L. Gleicher

⁵ Even if we were to find that defendant violated the procedure set forth in MCL 600.3205a, plaintiffs' exclusive remedy for violations of the statute is to file an action in circuit court to convert the foreclosure proceeding into a judicial foreclosure. MCL 600.3205c(8). Thus, pursuant to the statute, a borrower cannot avoid a foreclosure completely just because a mortgage holder or a mortgage servicer violated the procedure set forth for a foreclosure by advertisement.